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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO MUNETON,

Defendant and Appellant.

D055135

(Super. Ct. Nos. SCD216176;
SCS216947;
SCD202761)

APPEAL from a judgment of the Superior Court of San Diego County, Francis M. Devaney, Judge. Affirmed.

Ricardo Muneton appeals a judgment entered after his jury conviction on one count of residential burglary (Pen. Code, §§ 459, 460).¹ On appeal, he contends the trial court erred by (1) using his prior juvenile adjudication to enhance his sentence pursuant

¹ All statutory references are to the Penal Code.

to the three strikes law (§§ 667, subds. (b)-(i), 1170.12, 668), and (2) denying his *Batson/Wheeler*² motion.

FACTUAL AND PROCEDURAL BACKGROUND

At about 2:15 a.m. on September 19, 2008, Richard Fritz awoke in his Pacific Beach home to discover a stranger, Muneton, standing in his bedroom. Muneton jumped out of the bedroom window and Fritz chased him. When Muneton eventually stopped running and faced him, Fritz tackled and punched him 10 to 15 times. An off-duty border patrol agent intervened and handcuffed Muneton. Searching Muneton, the agent found two cell phones, an iPod, a set of keys, and a necklace. Police subsequently arrived and arrested Muneton.

Police officers went to Fritz's home and found a bag outside of his bedroom window. The bag contained a sombrero, a bike reflector, a woman's T-shirt, and two necklaces. The officers also saw the screen had been removed and was sitting below the window.

An information charged Muneton with residential burglary (§§ 459, 460). It alleged that another person, other than an accomplice, was present in the residence during the commission of the burglary (§ 667.5, subd. (c)(21)). It further alleged Muneton was ineligible for probation (§ 1203, subd. (e)(4)) and had a prior juvenile adjudication that was a serious or violent felony under the three strikes law (§§ 667, subds. (b)-(i), 1170.12, 668).

² *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.

The jury found Muneton guilty of residential burglary and found true the allegation another person, other than an accomplice, was present in the residence during the burglary. In a bifurcated bench trial, Muneton admitted he had suffered a prior juvenile adjudication for robbery. The trial court found the prior strike allegation true. The trial court sentenced Muneton to the mid-term of four years for the residential burglary, doubling it under the three strikes law based on his prior strike conviction, for a total term of eight years in prison. Muneton timely filed a notice of appeal.

DISCUSSION

I

Prior Juvenile Adjudication under the Three Strikes Law

Muneton contends the trial court erred by using his prior juvenile adjudication to enhance his sentence pursuant to the three strikes law (§§ 667, subds. (b)-(i), 1170.12, 668). Although Muneton acknowledges we are bound to follow the California Supreme Court's contrary determination of that issue in *People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*), he nevertheless raises the issue in this appeal to preserve it for any further appeals of his case to the California Supreme Court and federal courts.

In *Nguyen*, the California Supreme Court concluded a prior juvenile adjudication can be used to enhance an adult defendant's sentence under the three strikes law without violating the defendant's constitutional rights to due process of law or to a jury trial. (*Nguyen, supra*, 46 Cal.4th at pp. 1010, 1021-1028.) Because the doctrine of stare decisis compels us to follow decisions of the California Supreme Court, we must follow its holding in *Nguyen*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455;

People v. Haynes (1998) 61 Cal.App.4th 1282, 1298.) Accordingly, we reject Muneton's contention that *Nguyen* was wrongly decided and therefore the trial court erred by using his prior juvenile adjudication to enhance his sentence under the three strikes law.

II

Batson/Wheeler Motion

Muneton contends the trial court erred by denying his *Batson/Wheeler* motion.

A

"A party may not use peremptory challenges to remove prospective jurors solely on the basis of group bias. Group bias is a presumption that jurors are biased merely because they are members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds." (*People v. Fuentes* (1991) 54 Cal.3d 707, 713.) "The use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under article I, section 16 of the California Constitution [citation] as well as the equal protection clause of the Fourteenth Amendment to the United States Constitution." (*People v. Burgener* (2003) 29 Cal.4th 833, 863 (*Burgener*).) "A party who suspects improper use of peremptory challenges must raise a timely objection and make a prima facie showing that one or more jurors has been excluded on the basis of group or racial identity. . . . Once a prima facie showing has been made, the prosecutor then must carry the burden of showing that he or she had genuine nondiscriminatory reasons for the challenges at issue." (*People v. Jenkins* (2000) 22 Cal.4th 900, 993.) "The prosecutor need only identify facially valid race-neutral [i.e., nondiscriminatory]

reasons why the prospective jurors were excused. [Citations.] The explanations need not justify a challenge for cause. [Citation.] 'Jurors may be excused based on "hunches" and even "arbitrary" exclusion is permissible, so long as the reasons are not based on impermissible group bias. [Citation.]' [Citation.]" (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1122.) "The justification need not support a challenge for cause, and even a 'trivial' reason, if genuine and neutral, will suffice." (*People v. Arias* (1996) 13 Cal.4th 92, 136.) "A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons." (*People v. Lenix* (2008) 44 Cal.4th 602, 613 (*Lenix*).)

If the prosecutor gives reasons for a peremptory challenge of a juror that are facially neutral or nondiscriminatory, the trial court then "determines whether the defendant has proven purposeful discrimination. The ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike [i.e., peremptory challenge]." (*Lenix, supra*, 44 Cal.4th at pp. 612-613.) "In determining whether the defendant ultimately has carried his burden of proving purposeful racial discrimination [or other group bias], 'the trial court "must make 'a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known, his knowledge of trial techniques, and his observations of the manner in which the prosecutor has examined members of the venire and has exercised challenges for cause or peremptorily' [Citation.]" ' [Citation.] . . . 'All that matters is that the prosecutor's reason for exercising the peremptory challenge is sincere and legitimate, legitimate in the sense of being nondiscriminatory.' [Citation.] A reason that makes no

sense is nonetheless 'sincere and legitimate' as long as it does not deny equal protection." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1100-1101 (*Guerra*).) " 'The trial court has a duty to determine the credibility of the prosecutor's proffered explanations' [citation], and it should be suspicious when presented with reasons that are unsupported or otherwise implausible [citations]." (*People v. Silva* (2001) 25 Cal.4th 345, 385.) "When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings. But when the prosecutor's stated reasons are either unsupported by the record, inherently implausible, or both, more is required of the trial court than a global finding that the reasons appear sufficient." (*Id.* at p. 386.)

"The trial court's ruling on this issue is reviewed for substantial evidence." (*People v. McDermott* (2002) 28 Cal.4th 946, 971.) "We review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges ' "with great restraint." ' [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal." (*Burgener, supra*, 29 Cal.4th at p. 864.)

B

During jury selection, in response to the trial court's question, a prospective juror, Seth Hardieway, explained his prior experience in a criminal case about two to three

years earlier: "There was a mistrial. The prosecution didn't present some evidence to the defense so they just canceled the whole case." The mistrial was declared after Hardieway sat on the jury for about one day. The trial court asked Hardieway whether there was anything about his experience of that mistrial that would affect his ability to be fair in Muneton's trial. He replied, "No." In response to other questions by the court, Hardieway later described his background and ability to be fair and impartial:

"I live in Skyline Hills. Currently I am [a] computer scientist for the Navy civil service. Pretty much been doing that my entire adult life. Mother lives with me. She has a history teaching, for the most part, and psychology work. I don't have any children. There is no reason why I cannot be fair and impartial."

Subsequently, the prosecutor exercised a peremptory challenge against Hardieway. An unreported sidebar conference was held at the request of Muneton's counsel. Afterward, the trial court excused Hardieway.

The following day, during a recess in trial, Muneton's counsel objected to (i.e., made a *Batson/Wheeler* motion challenging) the prosecutor's exercise of a peremptory challenge against Hardieway, one of only two African-Americans in the jury pool.³ The trial court found Muneton's counsel had made a prima facie showing of group bias, noting: "Mr. Hardieway was, for all intents and purposes, the only African-American juror available for the defense to choose." The court then noted the burden shifted to the

³ The other African-American in the jury pool was number 34 out of the pool of 35 prospective jurors and never reached the jury panel.

prosecutor and asked her to justify her challenge with a nonracial reason. The prosecutor explained her peremptory challenge of Hardieway:

"First I would like to make the point I passed several times when Mr. Hardieway was indeed our potential [juror no.] 12. There [are] several times I passed when I left him on there. I just -- just [had] a bad, gnawing feeling when he stated during his voir dire that during the mistrial, the reason for the mistrial was because the prosecution had not turned over evidence to the defense. That kept eating at me, and that he was thinking that perhaps the prosecution does some things underhandedly and looks at things in a different light. I didn't question him on that specifically, but in looking at it, picking and kicking, finally I just said, you know what, I have a bad feeling. I'm going with what he said, as far as [the] prosecution not turning over any evidence.

"Additionally, I did find that he didn't have any kids. That went into whether he was young and also didn't have a lot of life experience. So based on a combination of those factors, after passing on him several times, leaving him on, I decided to kick him and go with some of the other ones that were other potentials to come into the box."

In response, Muneton's counsel confirmed that Hardieway "did say he had served on a prior, I think assault case, that he said [the] prosecution failed to turn over some information to the defense and so it resulted in a mistrial rather than going to verdict." But Muneton's counsel argued that Hardieway, along with the other prospective jurors, was questioned whether there was anything regarding his prior jury experience that would affect him or make him biased against either party in this case, to which Hardieway replied "no." Muneton's counsel further argued the prosecutor did not question Hardieway whether he had an antiprossecution bias based on his service as a juror on the prior criminal case that resulted in a mistrial. He further argued the prosecutor did not challenge those jurors who had prior contact with, and arguably might

have a bias against, law enforcement. Regarding the prosecutor's citation of Hardieway's youth and lack of children, Muneton's counsel argued the juror (a Caucasian man) who replaced Hardieway appeared to be younger than Hardieway and also did not have children.

The trial court denied Muneton's motion, stating:

"[It] needs to be evident to the court before I grant the motion for cause that there is a purposeful discrimination in the challenge of Mr. Hardieway. And there must be evidence that there were reasons other than bias and instead some prejudice against Mr. Hardieway.

"In reviewing my notes, [the prosecutor] says that she just had the gut feeling, [Hardieway] having been on this mistrial [case] involving some kind of alleged prosecutorial misconduct bothered her and bugged her until she exercised a challenge.

"I'm looking at my notes. And there were nine jurors who responded positively to having previous criminal jury experience -- or eight of those nine sat on [juries] that reached verdicts. The only one who [sat] on a jury that . . . did not reach a verdict was Mr. Hardieway. That obviously is something that [the prosecutor] latched onto and it bothered her to the point she exercised a challenge. She called it a hunch. There is nothing wrong with hunches during peremptory challenges as long as there is not some mass pro-racial bias.

"I don't frankly see any racial bias given the fact that other jurors in similar positions regarding criminal jury experience had different experiences than Mr. Hardieway. I don't see . . . anything, any racial animus in deciding that person who is on a criminal jury that did not reach a verdict be someone the prosecution may not want on the jury. I do think that is [a] sufficient non-bias, non-prejudicial reason[] to excuse him so I'm going to deny the request."

C

Muneton asserts the trial court erred by denying his *Batson/Wheeler* motion because the prosecutor's reasons showed she challenged Hardieway for a racially

discriminatory purpose. Muneton argues there was nothing about Hardieway's mistrial jury service that would impact his ability to be fair and impartial and no rational person could conclude he would not have been a fair and impartial juror in this case.

We conclude the record shows the trial court made a sincere and reasoned attempt to evaluate the prosecutor's explanation for challenging Hardieway.⁴ (*Guerra, supra*, 37 Cal.4th at p. 1100.) Furthermore, we conclude there is substantial evidence to support the court's finding that the prosecutor's reasons for challenging Hardieway were sincere, legitimate, and nondiscriminatory. (*Id.* at pp. 1100-1101.) The primary reason cited by the prosecutor for challenging Hardieway was his prior service on a jury in a criminal trial during which a mistrial was ordered by the court because the prosecution in that case apparently withheld evidence from the defense.⁵ The prosecutor explained that she had a "bad, gnawing feeling" about Hardieway's prior service on that jury, believing he might think the prosecution acts in an underhanded manner. The trial court cited that reason in denying Muneton's *Batson/Wheeler* motion, noting none of the other prospective jurors had served on a jury in a prior criminal trial that resulted in a mistrial, rather than a verdict. The trial court was in the best position to judge the credibility of the prosecutor's

⁴ Because the parties do not dispute the trial court's finding Muneton made a prima facie case showing Hardieway was challenged by the prosecutor based on his race, we presume the trial court correctly decided that issue and proceeded to address the prosecutor's stated nondiscriminatory reasons and the trial court's determination of Muneton's *Batson/Wheeler* motion.

⁵ A prospective juror's prior jury experience may provide a valid, nondiscriminatory reason for challenging that juror. (Cf. *U.S. v. Mitchell* (9th Cir. 2007) 502 F.3d 931, 957-958; *U.S. v. Power* (9th Cir. 1989) 881 F.2d 733, 740.)

purported reasons for challenging Hardieway considering the circumstances of Muneton's case as then known, its knowledge of trial techniques, and its observations of the manner in which the prosecutor examined members of the venire and exercised challenges for cause or peremptorily. (*Guerra, supra*, 37 Cal.4th at pp. 1100-1101.) It is not our function on appeal to judge the credibility of the prosecutor's explanation or reweigh the evidence. Furthermore, contrary to Muneton's apparent assertion, the prosecutor's cited reasons for challenging Hardieway were not inherently implausible. Rather, she could, as the trial court implicitly found, have genuinely had a hunch, or "bad, gnawing feeling," that Hardieway might think the prosecution acts in an underhanded way based on his prior jury service in the criminal trial that resulted in a mistrial based on the prosecution's failure to disclose some evidence to the defense. (*Lenix, supra*, 44 Cal.4th at p. 613.) The prosecutor's failure to question Hardieway during voir dire regarding his service on the jury in the prior criminal trial, and any possible bias against the prosecution he may have obtained, does *not*, as Muneton argues, strongly suggest she had a discriminatory purpose for challenging Hardieway.

Although the trial court did not cite the prosecutor's other stated reasons for challenging Hardieway, the court could also have reasonably concluded the prosecutor's citation of Hardieway's youth, lack of life experience, and lack of children were other sincere, legitimate, and nondiscriminatory reasons for challenging him. Although, as Muneton notes, the prosecutor did not challenge other prospective jurors who did not have children and/or were young, the court could find those other factors, in addition to Hardieway's service on the jury in the mistried criminal trial, made Hardieway

sufficiently different from those other jurors to support her explanation that she challenged him for nondiscriminatory reasons.

We conclude the trial court properly found Muneton did not carry his burden to prove the prosecutor challenged Hardieway for a discriminatory, group bias reason and not for the reasons she represented to the court. Because there is substantial evidence to support the trial court's finding regarding the nondiscriminatory purpose of the prosecutor's peremptory challenge of Hardieway, we defer to the court's decision and conclude it did not err by denying Muneton's *Batson/Wheeler* motion. (*People v. McDermott, supra*, 28 Cal.4th at p. 971; *Burgener, supra*, 29 Cal.4th at p. 864.)

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.